

[Ganesh] Nadi Viswanathan
Attorney-at-Law
469 Seventh Ave., Seventh Flr.,
New York, NY 10018
Tel.: (212) 359-9367; Fax: (646) 727-9765
Email: info@divorceimmigrationattorneys.com

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

PATRICK EDIAGBONYA,

CASE NUMBER: 18-cv-03882

Plaintiff,

v.

STEVEN TERNER MNUCHIN,
United States Secretary of Treasury
DAVID J. KAUTTER,
Acting Commissioner, Internal Revenue Service, and
LAINA MERCANDETTI,

Defendants.

X

**MOTION SEEKING A MISCELLANEOUS RELIEF AS AND BY WAY OF A *NUNC-
PRO TUNC RELIEF***

1. Plaintiff, Patrick Ediagbonya, by and through his undersigned counsel, [Ganesh] Nadi Viswanathan of VISWANATHAN ASIA-PACIFIC INTERNATIONAL LAW PRACTICE, P.C., 469 Seventh Ave., Seventh Flr., New York, NY 10018, respectfully submits this Motion Seeking Miscellaneous Relief, and requests a relief as fully explained hereunder:

2. Plaintiff filed the instant Civil Complaint in the above action, seeking certain relief under the Federal Torts Claims Act (FTCA) 28 U.S.C. §1346(b), against the United States Secretary of the Treasury, Acting Commissioner, Internal Revenue Service and an individual Federal employee named Laina Mercandetti, in respect of certain bodily injury suffered as a result of a tortious acts committed by a Federal employee, Laina Mercandetti.

3. Plaintiff filed the Complaint before this Honorable Court on the midnight of April 30, 2018, albeit with a few minutes delay (to be precise, five minutes) that was caused by a technical difficulty on the Court's website, in the underlying action pursuant to the letter dated October 30, 2017, from the Claims Management Office, IRS Office of Chief Counsel (CC:GLS:CLP) 1111 Constitution Ave., NW, Room 6404, Washington, DC 20224, denying the plaintiff's claim for damages under the abovementioned Federal Tort Claims Act (FTCA), 28 U.S.C., § 1346(b), 2671-2680.

4. The Claims Management Office of the IRS Office of Chief Counsel further informed the plaintiff that he [plaintiff] can file a suit against the United States in case the plaintiff wished to contest the above determination of the IRS denying the plaintiff's claim.

5. The letter from the Claims Management Office of the IRS Office of Chief Counsel denied the claim of the plaintiff on an erroneous reading of law [28 U.S.C. §2401(b) and rules thereunder and further ignoring controlling case law authority arising in the D.C. Circuit, viz. *United States v. Wong*, 13-1075, *United States v. June*, also of the same court, to the effect that a claim filed made under Federal Tort Claims Act be treated as having been properly received, if the last date for receiving the Claim falls on a Saturday, Sunday or a holiday and the Claim was duly received on the next working day.

6. Plaintiff had time, pursuant to 28 U.S.C. § 2675, 28 CFR §14.9, to file a suit against the above denial of plaintiff's claim up to six months from the date of mailing of the denial letter dated October 30, 2017, by the Claims Management Office of the IRS. The six-month period to file the Suit before the Court starts after the day on which the IRS Claims Management Office mails the denial letter.

7. Plaintiff, as explained above, made all the efforts to file the suit in this action on April 30, 2018. However, because of a computer technical-hang of the Court's website at around midnight, the Complaint could only be filed five minutes past the midnight, i.e., at 0.05 a.m.,

8. Plaintiff, *as an abundant caution and in the interest of law, justice and equity to the plaintiff and the underlying case*, respectfully requests a miscellaneous relief by way of a *nunc pro tunc relief* from this Honorable Court to ignore the five minutes past the midnight on April 30, 2018 and to request the Clerk of the Court to treat and accept the Complaint as if it was filed as of April 30, 2018.

9. Plaintiff respectfully submits that the action has just commenced a few hours before and, the Summons to the defendants have not yet been issued. Further, because the action filed herein has not yet even been opened by the Clerk's Office, even the assignment of the Judge of this Court has not yet occurred.

Respectfully submitted this 1st day of MAY, 2018.

Yours, etc.,

*/s//nadi ganesan
viswanathan/nv2513*

[Ganesh] Nadi Viswanathan,
Attorney-at-Law
469 Seventh Ave., Seventh Flr.,
New York, NY 10018
Tel.(212)-359-9367; Fax (646)727-9765
Email:
info@divorceandimmigrationattorneys.com
Attorneys for the plaintiff,
Patrick Ediagbonya

TO:

1. **STEVEN TERNER MNUCHIN,**
United States Secretary of Treasury
Department of the Treasury
1500 Pennsylvania Ave., N.W.
Washington, D.C. 20220
2. **David J. Kautter**
Acting Commissioner
Internal Revenue Service
United States Department of the Treasury
1111 Constitution Ave., NW
Washington, DC 20224. And
3. **LAINA MERCANDETTI**
1767 CNT Place Ave., Suite 228
Yonkers, NY 10710